



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 2881-02
6 December 2002

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 December 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 24 April 1995 at the age of 22 and served without disciplinary incident.

During the period from 19 February to 17 December 1997 you were counselled on several occasions regarding your nonrecommendation for promotion due to weight control failure. During this period you were also counselled regarding your unsatisfactory performance while assigned to a weight control program.

On 15 March 1998 you were again counselled regarding your nonrecommendation for promotion due to weight control failure. Shortly thereafter, on 28 April 1998, you were notified of pending administrative separation action by reason of weight control failure. At that time you were advised of your right to consult with legal counsel and to submit a statement of rebuttal to the separation proceedings. After consulting with legal counsel you elected your right to submit a statement in rebuttal to the separation, however, this statement is not contained in

your record. On 15 May 1998 your commanding officer recommended separation by reason of weight control failure. The discharge authority approved this recommendation and directed a general discharge. On 2 June 1998 you were so discharged and assigned an RE-4 reenlistment code.

On 22 February 2002 you were advised by Headquarters, Marine Corps, Performance Evaluation Review Branch, that the RE-4 reenlistment code was correctly assigned based on your overall record and nonrecommendation for reenlistment at the time of your separation.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, and your contention that because of your exemplary record of service and good physical training performance evaluations you should have been assigned a better reenlistment code. Nevertheless, the Board concluded these factors and contention were not sufficient to warrant a change in the reenlistment code because of your weight control failure, unsatisfactory performance while assigned to a weight control program, and since you were not recommended for reenlistment. Accordingly, your application has been denied.

Regarding your contention that you elected your right to present your case to an administrative discharge board (ADB), the Board noted that when an individual is being processed for separation due to weight control failure, he is entitled to request an ADB only if he has six or more years of active service. Since you had only about three years of service, you were not entitled to request an ADB.

The Board did not consider whether your characterization of service for separation should be changed, since you did not ask for such consideration, and you have not exhausted your administrative remedy applying to the Naval Discharge Review Board (NDRB). You may apply to NDRB by submitting the attached Application for Review of Discharge or Dismissal from the Armed Forces of the United States (DD Form 293).

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure